

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 26**

**Kimberly-Clark,
Conway Personal Care Facility**

Employer

and

Paul A. Shock

Case 26-RD-1170

Petitioner

and

**Carpenters Industrial Council United Brotherhood
Of Carpenters and Joiners of America, Local 147**

Union

REPORT ON OBJECTIONS

Pursuant to Section 102.69(d) of the Board's Rules and Regulations, I caused an investigation of objections to the election in this case and make the following findings and recommendations. As described below, I am recommending the Union's objections be dismissed.

INTRODUCTION

Based on a petition filed on March 26, 2010,¹ and a Stipulated Election Agreement which I approved on April 8, an election was conducted on April 27 and 28, among certain employees of the Employer at its Conway, Arkansas facility.² The Tally of Ballots revealed that out of approximately 89 eligible voters, 44 voted for and 44 voted against the Union. There were no challenged ballots and no void ballots. On May 5 the Union filed timely objections to the conduct of the election. A copy of the Union's objections was served upon the Petitioner and the Employer and is attached to this report.

¹ All dates are 2010 unless otherwise noted.

² Included: All full-time and regular part-time integrated maintenance technicians, mechanical and electrical maintenance employees and maintenance planners. Excluded: Office clerical and professional employees, guards and supervisors as defined by in the Act.

OBJECTION 1

By this objection, the Union alleges that the National Labor Relations Board and/or the Employer failed to provide the Union with an election eligibility list containing the full names and addresses of all eligible voters.

In *Excelsior Underwear*, 156 NLRB 1236 (1966), the Board established a rule that requires employers to file with the Regional Director an election eligibility list containing the names and addresses of all eligible voters within seven days after approval by the Regional Director of an election agreement or after a direction of election. Section 11312.2 of the Board's Casehandling Manual (Part Two, Representation Proceedings) provides:

Immediately upon receipt, the Regional Director should mail the list to all labor organizations and individual petitioners involved. If any party desires to pick up the list at the Regional Office, a receipt for the list should be obtained showing time and date of delivery.

The Stipulated Election Agreement in this case, which contained the requirement that the Employer furnish the eligibility list (*Excelsior* list) within seven days of the approval of the agreement, was entered by the Parties on April 7 and approved by the Regional Director on April 8. The *Excelsior* list was received in the Regional Office on April 14 and mailed to the Union at the below address on that date. The list was also mailed to the Petitioner on April 14.

On the Petition, the Union's name and address was shown as:

Carpenters Industrial Council United Brotherhood of Carpenters and
Joiners of America, Local 147
3920 Wall Street
Little Rock, AR 72209

All of the Region's written correspondence to the Union, including service of the Petition, was mailed to the above address. While some documents, such as the Stipulated Election Agreement were also transmitted to Union Council Representative Tony Hadley by email, prior to the election the Union never advised the Regional Office that the above address was incorrect or that it preferred correspondence or the *Excelsior* list be sent to a different location. On April 27 during the pre-election conference, Hadley informed the Board Agent for the first time that the Union had never received a copy of the *Excelsior* List.

Union Representative Hadley provided an affidavit in support of this objection. He testified that during discussions with the Board Agent while the Parties were negotiating the election agreement, he was advised of the *Excelsior* list procedures including the time limit for the Employer to provide the list. He further testified that he did not notice that the Union's address was shown as set forth

above on documents he received from the Board Agent during the discussions leading to the election agreement. He now contends that the correspondence should have been addressed to his home address in Virginia, however, Hadley admittedly did not bring this matter to the Board Agent's attention or request that documents be addressed to him at the Virginia address. Hadley also testified that the *Excelsior* list was received by an employee of Local 147 at the above address, however, this employee did not forward the list to Hadley. Finally, Hadley also confirmed that a few weeks prior to the election he requested and received directly from the Employer a complete list of bargaining unit employees including the employees' addresses and phone numbers.

During the investigation of this objection, the Employer confirmed that in response to an information request from the Union it provided to the Union about three weeks prior to the election a list of bargaining unit employees' names and addresses, which was identical to the list it sent to the Regional Office pursuant to the *Excelsior* requirements. Union Representative Hadley confirmed in an affidavit that the Union received this list from the Employer about three weeks prior to the election. Therefore, while the Union alleges it did not receive the *Excelsior* list from the Board, it is undisputed the Union received an identical list on or prior to the April 14 due date for the *Excelsior* list.

Conclusion and Recommendation:

All correspondence mailed to the Union, including the stipulated election agreement, contained the same address to which the *Excelsior* list was sent. At no time during the process leading to the election did the Union raise any concerns about the address or request that documents be sent to a different address. Additionally, Regional files indicate that the address used to mail documents to the Union in this matter is the same address the Region used in previous elections involving the Union and the Employer at the Conway, Arkansas facility. At no time prior to the pre-election conference did the Union inform the Region that it had not received the *Excelsior* list. Although, the *Excelsior* list requirements are not abrogated when an employer provides a list of unit employees and their addresses directly to a union, here it is undisputed that the Employer met its *Excelsior* list requirements by timely furnishing the list to the Region and that it also furnished an identical list to Union pursuant to the Union's request.

Compare, *Special Citizens Futures Unlimited, Inc.*, 331 NLRB 160 (2000), where the Board set aside an election because a Regional office failed to timely transmit the *Excelsior* list to the Union and provided incorrect information to the parties regarding the due date of the list. Neither of those factors is present in the instant case.

Based on the above, I recommend finding no merit to Objection 1.

OBJECTION 2

By this objection the Union contends the Employer promised benefits to employees if they voted to no longer be represented by the Union.

The Union's evidence in support of this objection consisted of the testimony of three employees who testified concerning alleged statements by Mill Reliability Leader Ted Pinkston in group meetings with maintenance employees about one week prior to the election.

Employee witness A testified that Pinkston announced to employees there would be a decertification election. Although the witness admittedly could not recall Pinkston's exact words, the witness testified that Pinkston told the employees present in the meeting that he did not think they needed a union and stated it would probably be better for the Company if there was not a union. Witness A also testified that Pinkston told employees they would be able to communicate and deal with management better if no third party was present. Finally witness A testified that Pinkston told employees during the meeting that he could not promise them anything. Employee witness B testified that during the meeting Pinkston told employees that the Employer thought there would be better communication between the Employer and the maintenance employees without the Union. This witness also testified that Pinkston told employees they needed to vote for the Union if they felt they needed representation. Finally, witness B testified that Pinkston made no promises of benefits to employees during the meeting. Employee witness C testified that during the meeting Pinkston told employees that he wanted to discuss the upcoming election with them. Pinkston told employees that he felt they could work together without the Union and did not need a third party intervening. Pinkston added that he felt they could get more accomplished without a third party. Witness C testified that Pinkston stressed not needing a third party several times, and that he said it would be better for everyone concerned without a union. The witness further testified that Pinkston did not elaborate on this statement or explain what he meant by the statement. Finally witness C testified that near the end of the meeting Pinkston said that if employees felt strongly about the Union they needed to vote for it.

Conclusion and Recommendation:

Based on the testimony noted above, the evidence is insufficient to establish that the Employer engaged in objectionable conduct by promising benefits to employees if they voted to no longer be represented by the Union. The evidence obtained in the investigation did not reveal the Employer promised to improve benefits or working conditions during the critical period. An Employer expressing its opinion about a union, or stating that it does not think a third party is necessary, does not amount to objectionable conduct.

In *Noah's New York Bagels, Inc.*, 342 NLRB No. 42 (1997) the election was not set aside when the Employer, during a captive audience meeting one day prior to the election, asked employees to vote to give the Employer a second chance to show what the Employer could do. In *National Micronetics*, 277 NLRB 993 (1985) generalized statements asking for another chance or for more time were held to be within the limits of permissible campaign propaganda.

Based on the above, I recommend finding no merit to Objection 2.

OBJECTION 3

By this objection the Union contends the Employer made false and misleading statements in its April 16 letter to employees. The Union's only evidence in support of this objection consisted of the April 16 letter.

It is undisputed that the Employer mailed a letter dated April 16, to all bargaining unit maintenance employees. The text of this letter, which was signed by Facility manager John H. Powell, was as follows:

In the time leading up to the April 27 and 28 decertification election, questions have been raised regarding what would happen if the UBC was no longer representing you at our site. A flyer from the Union mentions that union membership and contract bargaining "guarantees" several things. In an effort to respond directly to these comments and questions, I'd like to set the record straight on several of these items.

- *There is nothing guaranteed in the bargaining process;*
- *You will not be denied future raises or benefit improvements because you are no longer represented by the UBC;*
- *You will not lose your seniority because you are no longer represented by the UBC;*
- *You will not be disciplined or discharged because of any protected union activity;*
- *All employees will always have the right to discuss problems directly with their supervisors and to speak for themselves individually on anything concerning their jobs without having to go through a UBC representative or group;*
- *We will not change the fixed shift work schedules for members of the Maintenance team independent of the Operations teams because you are no longer represented by the UBC; and,*
- *Maintenance team members will continue to be key participants in the improvements needed to our maintenance systems and structure.*

It is my sincere hope that responding to the questions raised and claims made will help as you consider your vote in the upcoming secret ballot election. Again, I encourage you to participate in this vote-it is your opportunity to have your voice heard.

Conclusion and Recommendation:

In the letter cited above, the Employer noted that there was nothing guaranteed in the bargaining process, employees would not lose their seniority, and that work schedules would not change if they were no longer represented by the Union. These statements do not rise to the level of objectionable conduct and do not constitute a promise of benefits as alleged.

In *Crown Electrical Contracting, Inc.*, 338 NLRB No. 36 (2002) the Board found the Employer's statement that it would do whatever it took to keep the employees' current benefits to be a lawful promise to maintain the status quo which the Board has held in the past is not objectionable, where there was no history that would cause employees to interpret the statement as a promise to increase benefits. See also *Weather Shield Manufacturing.*, 292 NLRB 1 (1988) where the Board held that promises to maintain the status quo are not objectionable.

Based on the above, I recommend finding no merit to Objection 3.

CONCLUSION

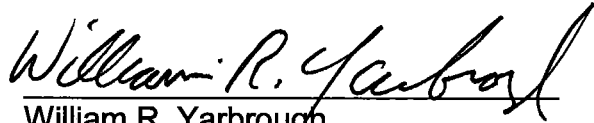
Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, within fourteen (14) days from the date of issuance of this report, any party may file with the National Labor Relations Board, Attn: Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570-0001, an original and eight 8 copies of exceptions to such report, with supporting brief, if desired, which shall be printed or otherwise legibly duplicated.

Immediately upon filing of such exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, upon the other parties and simultaneously submit to the Board a statement of such service. If no exceptions are filed to the Regional Director's Report, the Board may decide the matter forthwith upon the record or make other disposition of the case.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the E-

Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Dated at Memphis, TN, this 4th day of August 2010.

A handwritten signature in black ink, reading "William R. Yarbrough". The signature is fluid and cursive, with the first name "William" and last name "Yarbrough" clearly legible. A horizontal line is drawn beneath the signature.

William R. Yarbrough,
Acting Regional Director
National Labor Relations Board
Region 26
The Brinkley Plaza Building
80 Monroe Avenue, Suite 350
Memphis, TN 38103

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26

UNITED BROTHERHOOD OF CARPENTERS)
AND JOINERS OF AMERICA, CARPENTERS)
INDUSTRIAL COUNCIL, LOCAL 147)
Union)

Case No. 26-RD-1295

and)

Paul Andy Shock)
Petitioner)

and)

Kimberly-Clark, Conway)
Personal Care Facility)
Employer)

UNION'S OBJECTIONS TO CONDUCT
AFFECTING THE RESULT OF THE ELECTION

The Union, the United Brotherhood of Carpenters and Joiners of America, Carpenters Industrial Council, Local 147, files these objections to the election held on April 27 and 28, 2010 in the above-referenced case in which a majority of votes were not cast for the Union on the grounds that the National Labor Relations Board and or the Employer engaged in unlawful conduct prior to the election which affected the results of the election. The National Labor Relations Board and or the Company and its agents engaged in unlawful conduct including, but not limited to, the following:

1. Failing to provide the Union with an election eligibility list containing the full names and addresses of all eligible voters.
2. The Employer promised employees benefits if they voted to no longer be represented by the Union.
3. The Employer made false and misleading statements in it's April 16, 2010 letter to employees.
4. By these and other acts of conduct, the employer prevented and interfered with the conduct of a free and fair election

The conduct of the Employer and/ or the National Labor Relations Board as herein before described and set forth, did adversely affect the conduct of the election and

deprived the employees of the free exercise of their rights under the National Labor Relations Act.

WHEREFORE, the Union objects to the conduct of the election and respectfully requests that the results of the election be set aside and a new election be ordered.

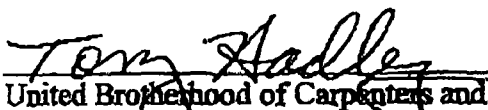
CERTIFICATE OF SERVICE

The foregoing was served on May 5, 2010, by fax and mailing thereof as follows:

Certified mail to:

Kimberly-Clark, Conway
Personal Care Facility
480 Exchange Street
Conway, AR 72032

Paul A. Shock
Decertification Petitioner
14 Lige Lane
Enola, AR 72047


United Brotherhood of Carpenters and
Joiners of America, Carpenters Industrial Council

Date: May 05, 2010